

(a) *ERISA* means the Employee Retirement Income Security Act of 1974, *et seq.*, 29 U.S.C. 1001, *et seq.*, as amended.

(b) *Order* means the whole or part of a final procedural or substantive disposition by the administrative law judge of a matter under section 3(40) of ERISA. No order will be appealable to the Secretary except as provided in this subpart.

(c) *Petition* means a written request under the procedures in this subpart for a finding by the Secretary under section 3(40) of ERISA that a plan is established or maintained under or pursuant to one or more collective bargaining agreements.

(d) *Petitioner* means the plan or arrangement filing a petition.

(e) *Respondent* means:

(1) A state government instrumentality charged with enforcing the law that is alleged to apply or which has been identified as asserting jurisdiction over a plan or other arrangement, including any agency, commission, board, or committee charged with investigating and enforcing state insurance laws, including parties joined under §2570.153;

(2) The person or entity asserting that state law or state jurisdiction applies to the petitioner;

(3) The Secretary of Labor; and

(4) A state not named in the petition that has intervened under §2570.153(b).

(f) *Secretary* means the Secretary of Labor, and includes, pursuant to any delegation or sub-delegation of authority, the Assistant Secretary for Employee Benefits Security or other employee of the Employee Benefits Security Administration.

(g) *Section 3(40) Finding Proceeding* means a proceeding before the Office of Administrative Law Judges (OALJ) relating to whether the Secretary finds an entity to be a plan to be established or maintained under or pursuant to one or more collective bargaining agreements within the meaning of section 3(40) of ERISA.

§2570.153 Parties.

For section 3(40) Finding Proceedings, this section shall apply instead of 29 CFR 18.10.

(a) The term “party” with respect to a Section 3(40) Finding Proceeding means the petitioner and the respondents.

(b) States not named in the petition may participate as parties in a Section 3(40) Finding Proceeding by notifying the OALJ and the other parties in writing prior to the date for filing a response to the petition. After the date for service of responses to the petition, a state not named in the petition may intervene as a party only with the consent of all parties or as otherwise ordered by the ALJ.

(c) The Secretary of Labor shall be named as a “respondent” to all actions.

(d) The failure of any party to comply with any order of the ALJ may, at the discretion of the ALJ, result in the denial of the opportunity to present evidence in the proceeding.

§2570.154 Filing and contents of petition.

(a) A person seeking a finding under section 3(40) of ERISA must file a written petition by delivering or mailing it to the Chief Docket Clerk, Office of Administrative Law Judges (OALJ), 800 K Street, NW., Suite 400, Washington, DC 20001-8002, or by making a filing by any electronic means permitted under procedures established by the OALJ.

(b) The petition shall—

(1) Provide the name and address of the entity for which the petition is filed;

(2) Provide the names and addresses of the plan administrator and plan sponsor(s) of the plan or other arrangement for which the finding is sought;

(3) Identify the state or states whose law or jurisdiction the petitioner claims has been asserted over the petitioner, and provide the addresses and names of responsible officials;

(4) Include affidavits or other written evidence showing that:

(i) State jurisdiction has been asserted over or legal process commenced against the petitioner pursuant to state law;

(ii) The petitioner is an employee welfare benefit plan as defined at section 3(1) of ERISA (29 U.S.C. 1002(1)) and 29 CFR 2510.3-1 and is covered by title I of ERISA (*see* 29 U.S.C. 1003);